

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

OCT 19 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Application by New York )  
Telephone Company (d/b/a Bell )  
Atlantic – New York), Bell Atlantic )  
Communications, Inc., NYNEX )  
Long Distance Company, and Bell )  
Atlantic Global Networks, Inc., for )  
Authorization To Provide )  
In-Region, InterLATA Services in )  
New York )

CC Docket 99-295

COMMENTS OF THE  
ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES

Jonathan Askin  
Vice President – Law  
THE ASSOCIATION FOR  
LOCAL TELECOMMUNICATIONS  
SERVICES  
888 17<sup>th</sup> Street, N.W.  
Suite 900  
Washington, D.C. 20006  
(202) 969-2597  
[jaskin@alts.org](mailto:jaskin@alts.org)

THE ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES  
By: Jonathan E. Canis  
Ross A. Buntrock  
Michael J. Francesconi  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W.  
FIFTH FLOOR  
Washington, D.C. 20036  
(202) 955-9600  
(202) 955-9792 (fax)  
[rbuntrock@kelleydrye.com](mailto:rbuntrock@kelleydrye.com)

Its Attorneys

October 19, 1999

No. of Copies rec'd CHB  
LBI:ALB:001

## **SUMMARY**

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”). ALTS does not represent any of the major interexchange carriers (“IXCs”), and therefore its interest in this proceeding is singularly focused on ensuring that the New York local telephone market is open to competition. In these Comments, ALTS reviews all aspects of Bell Atlantic’s Application and conducts sets forth its analysis in accordance with the language of section 271(d)(3) and the past precedent of Department of Justice and the Commission in analyzing the five previous RBOC applications for section 271 authority.

While ALTS commends Bell Atlantic for making significant progress in opening the New York local exchange market to facilities-based competitors and complying with the requirements of the competitive checklist, ALTS submits that Bell Atlantic’s performance of its obligations under several other checklist items does not warrant a determination by the Commission that Bell Atlantic is in compliance with its obligations. Specifically, Bell Atlantic appears to have complied with the following requirements under the competitive checklist:

- Nondiscriminatory access to unbundled switching;
- Nondiscriminatory access to 911/E911, directory assistance and operator call completion;
- Rules governing access to numbering access and administration;
- Nondiscriminatory access to databases and signaling;
- Access to interim number portability and long-term number portability;
- Local dialing parity;

- Reciprocal compensation obligations.

However, Bell Atlantic's Application does not appear clear the bar with respect to the following checklist items:

- Nondiscriminatory access to unbundled local loops;
- Nondiscriminatory access to DSL capable loops;
- Nondiscriminatory access to unbundled dedicated transport;
- Nondiscriminatory access to interconnection trunks;
- Nondiscriminatory access to poles, conduits and rights-of-way;
- Nondiscriminatory access to collocation and compliance with the Commission's collocation rules;
- Satisfaction of resale obligations under the Act.

### **Violations of the Commission's *Collocation Order***

ALTS demonstrates herein that Bell Atlantic fails to provide nondiscriminatory interconnection to its network as is required by the competitive checklist. Specifically, Bell Atlantic's current New York Interconnection Tariff contains provisions that do not comport with the national rules established by the Commission in its recent *Collocation Order*. Bell Atlantic must address the following violations of the Commission's rules before the Commission can find that Bell Atlantic complies with its 271 interconnection obligations:

- Unnecessary delays in the provisioning and implementation intervals;
- Restrictions on methods of interconnection and access;
- Restrictions on deployable equipment;
- Requiring that CLEC employees use Bell Atlantic escorts;

- Unreasonable restrictions on access to, and use of, collocation space;
- Inappropriate allocation of site preparation and other charges

As a result of these violations, CLECs are hampered in their ability to gain timely, effective and nondiscriminatory access to Bell Atlantic central offices for the physical or virtual placement of equipment necessary to allow them to compete in the New York local market.

### **Failure to Provide Nondiscriminatory Access to UNEs**

Bell Atlantic fails to provide nondiscriminatory access to unbundled local loops, and in particular, DSL-capable loops. When provisioning unbundled local loops, Bell Atlantic fails to follow proper loop provisioning procedures, and, as a result, Bell Atlantic's "hot cut" performance is deficient to the detriment of CLEC customers. Additionally, when provisioning local loops, Bell Atlantic regularly fails to meet Firm Order Commitment dates, further causing competitive harm to CLECs.

Bell Atlantic's provisioning of DSL-capable loops does not comply with the Act because (1) Bell Atlantic impermissibly imposes artificial technological restrictions on the availability of these loops, (2) Bell Atlantic's DSL tariff imposes unsupported and non-TELRIC recurring and non-recurring charges for DSL loop conditioning; (3) no performance metrics for DSL capable loops have been established in New York.

### **Failure to Meet the Public Interest Requirements**

Bell Atlantic fails the public interest analysis of the 271 review process for a number of reasons. First, the Performance Assurance Plan proposed by Bell Atlantic falls short of providing true assurances that Bell Atlantic will *maintain* a competitive local market, once that point is truly reached. The "self-executing remedies" set out in the Plan are far too inconsequential to Bell Atlantic to serve as effective penalties for anti-competitive behavior.

Second, stringent “antibacksliding” measures must be implemented, complete with a “rocket docket” type enforcement mechanism to ensure timely resolution of claims regarding anticompetitive behavior. Without these measures, the public interest cannot properly be protected.

### **Tiered Penalties and Fresh Look Opportunities**

ALTS recommends that the Commission employ antibacksliding measures, in a manner similar to those proposed by Allegiance Telecom in its Petition for Expedited Rulemaking. ALTS supports a three-tiered penalty approach: **Tier 1**: the first failure by Bell Atlantic to comply with a performance measure will result in mandated rate reductions; **Tier 2**: failure of Tier 1 rate reductions to curb anticompetitive behavior will result in suspension of 271 authority; and **Tier 3**: failure of Tiers 1 and 2 will result in the imposition of material fines on Bell Atlantic.

Further, ALTS also recommends that the Commission make available “fresh look” opportunities coincident with any grant of 271 authority. The Commission has implemented such policies in the past for significantly changed circumstances in a telecommunications market. Here, a fresh look policy will prevent certain long-term contracts with excessive termination penalties from foreclosing the development of competition in the New York local exchange market.

Bell Atlantic has not fully complied with section 271. Therefore, ALTS submits that the Commission should deny Bell Atlantic’s Application. Once Bell Atlantic has remedied the deficiencies noted herein, the Bell Atlantic should re file its Application, and once the Commission implements the pro-competitive antibacksliding measures advocated herein, the 1996 Act’s goal of widespread facilities-based competition will be close to realization.

## TABLE OF CONTENTS

SUMMARY .....	II
TABLE OF CONTENTS.....	VI
I. THE NEW YORK COMMISSION CONDUCTED A THOROUGH EXAMINATION OF BELL ATLANTIC’S SECTION 271 COMPLIANCE.....	2
A. The New York Commission’s Two and a Half Year Examination of Bell Atlantic’s 271 Compliance Has Produced A Solid Record .....	3
B. The Collaborative Processes Utilized by the New York Commission Were Generally Successful and Should Be Utilized In Future State Commission 271 Evaluations.....	4
C. The Third-Party Testing Conducted in New York Was Exhaustive and the New York Style OSS Test Should Be Recommended By the Commission As The Model Third-Party Test For The Country .....	5
II. BELL ATLANTIC MUST DEMONSTRATE FULL COMPLIANCE WITH EACH REQUIREMENT UNDER SECTION 271 .....	9
A. The “Is Providing” Standard Under Section 271 .....	10
B. Bell Atlantic’s Application Does Not Meet the “Is Providing” Standard Under Section 271.....	12
III. BELL ATLANTIC HAS MADE SUBSTANTIAL PROGRESS IN ITS COMPLIANCE WITH 271 OBLIGATIONS .....	13
IV. BELL ATLANTIC APPEARS TO DEMONSTRATE COMPLIANCE WITH NINE OF THE FOURTEEN ITEMS ON THE 271 COMPETITIVE CHECKLIST.....	14
A. Bell Atlantic Appears to Provide Access to Unbundled Switching.....	14
B. Bell Atlantic Appears to Provide Nondiscriminatory Access To 911/E911, DA, and Operator Call Completion .....	15
C. Bell Atlantic Appears to Provide White Page Directory Listings on a Nondiscriminatory Basis.....	17
D. Bell Atlantic Appears to Comply with Rules and Regulations Relating to Numbering Access and Administration. ....	18
E. Bell Atlantic Appears to Provide Nondiscriminatory Access To Databases And Signaling .....	19

F.	Bell Atlantic Appears to Provide Interim Number Portability and Long-Term Number Portability Where Required.....	20
G.	Bell Atlantic Appears to Provide Information For Local Dialing Parity.....	21
H.	Bell Atlantic Appears to Provide Reciprocal Compensation.....	22
V.	DESPITE SUBSTANTIAL PROGRESS BELL ATLANTIC HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST AND DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNES .....	23
A.	Bell Atlantic Does Not Provide Nondiscriminatory Access To Unbundled Local Loops .....	24
B.	Bell Atlantic’s Provision of DSL Capable Loops Does Not Comply With the Act.....	32
VI.	BELL ATLANTIC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO INTERCONNECTION .....	38
A.	Bell Atlantic Does Not Provide Nondiscriminatory Access to Unbundled Transport.....	40
B.	Bell Atlantic Does Not Provide Nondiscriminatory Access to Interconnection Trunks .....	42
C.	Bell Atlantic Has not Demonstrated that it Provides Nondiscriminatory Access To Poles, Ducts, Conduits And Rights Of Way .....	45
D.	Bell Atlantic’s Collocation Tariffs Violate Key Provisions of the Commission’s <i>Collocation Order</i> .....	49
VII.	BELL ATLANTIC HAS NOT DEMONSTRATED COMPLIANCE WITH ITS RESALE OBLIGATIONS.....	64
VIII.	ONCE THE PROBLEMS CITED HEREIN ARE REMEDIED THE NEW YORK LOCAL EXCHANGE MARKET MAY BE “FULLY AND IRREVERSIBLY OPENED” TO COMPETITION.....	67
IX.	ON THE EXISTING RECORD IT IS UNCLEAR WHETHER BELL ATLANTIC IS IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272.....	69
X.	BELL ATLANTIC’S APPLICATION FAILS TO DEMONSTRATE THAT ITS ENTRY INTO THE INTERLATA MARKET IN NEW YORK IS IN THE PUBLIC INTEREST .....	72

A.	The Commission Must Look Behind Bell Atlantic’s Claims That it Meets the Public Interest Standard .....	74
B.	Bell Atlantic’s Performance Assurance Plans Do Not Meet the Public Interest Test.....	77
C.	The Commission Must Adopt Stringent Antibacksliding Measures .....	79
D.	The Commission’s Antibacksliding Framework Should Utilize a Three-Tiered Penalty Approach .....	83
E.	The Commission Should Provide “Freshlook” Opportunities For Consumers Immediately Upon The Grant Of 271 Authority To Bell Atlantic.....	86
XI.	CONCLUSION.....	89



**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
Application by New York	)	
Telephone Company (d/b/a Bell	)	
Atlantic – New York), Bell Atlantic	)	CC Docket 99-295
Communications, Inc., NYNEX	)	
Long Distance Company, and Bell	)	
Atlantic Global Networks, Inc., for	)	
Authorization To Provide	)	
In-Region, InterLATA Services in	)	
New York	)	

**COMMENTS OF THE  
ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Service (“ALTS”), by its attorneys, and pursuant to the Commission’s September 29, 1999 Public Notice in the above-captioned proceeding, hereby submits these comments on the Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York ( “Application”).<sup>1</sup>

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”). ALTS does not represent any of the major interexchange carriers (“IXCs”) and therefore, its sole interest in this proceeding is to ensure that New York’s local market is open to competitors. As an initial matter,

---

<sup>1</sup> *Application by New York Telephone Company (d/b/a Bell Atlantic – New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization To Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295, Public Notice DA 99-2014 (rel. Sept. 29, 1999) (“Application”).*

ALTS wishes to commend and thank the Commissioners and Staff of the New York Public Service Commission (“New York Commission”) for their tireless efforts in examining Bell Atlantic-New York’s (“Bell Atlantic”) compliance with section 271 of the Act. Bell Atlantic’s Application, no doubt, comes closer to satisfying the requirements of section 271 of the Act than any such application filed to date. The progress made by Bell Atlantic in attempting to open the New York local exchange market to competition since it filed its “draft” 271 application with the New York Commission in 1997 is indeed significant. Nonetheless, Bell Atlantic still has not demonstrated that it has fully implemented certain requirements, integral to opening the New York market to competitors, and prerequisites to a grant of 271 relief by the Federal Communications Commission (“FCC” or “Commission”).

**I. THE NEW YORK COMMISSION CONDUCTED A THOROUGH EXAMINATION OF BELL ATLANTIC’S SECTION 271 COMPLIANCE**

The proceeding conducted by the New York Commission to examine Bell Atlantic’s compliance with Section 271 has produced a complete record that provides the Commission with an accurate picture of the status of local competition in the State of New York, and should be referenced by this Commission as it conducts its own examination of Bell Atlantic’s Application. Nonetheless, the Commission must conduct an independent analysis of Bell Atlantic’s compliance.

Under section 271(d)(2)(B), the Commission “shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).”<sup>2</sup> In

---

<sup>2</sup> 47 U.S.C. § 271(d)(2)(B).

requiring the Commission to consult with the states, Congress afforded the states an opportunity to present their views regarding the opening of the Bell Operating Company's ("BOC's") local networks to competition. The Commission has stated that "in order to fulfill their consultive role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications."<sup>3</sup> In evaluating the weight to accord the record of the state proceeding, the Commission "will consider carefully state determinations of fact that are supported by a detailed and extensive record, and believe the development of such a record to be of great importance to our review of section 271 applications."<sup>4</sup> The New York Commission has assembled one of the most complete records put together to date by a state commission in its examination of a BOC's application for 271 authority.

**A. The New York Commission's Two and a Half Year Examination of Bell Atlantic's 271 Compliance Has Produced A Solid Record**

The processes and procedures utilized by the New York Commission were, at bottom, quite thorough. On February 13, 1997, Bell Atlantic filed with the New York Commission a draft application of a petition seeking FCC approval of its entry into the in-region interLATA toll market pursuant to section 271 of the Act, and examination of Bell Atlantic's compliance has been at the forefront of the New York Commission's

---

<sup>3</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 30 (1997) ("*Ameritech Michigan Section 271 Order*").

<sup>4</sup> *Id.*

dockets ever since that date. In conducting its examination, the New York Commission provided competitors with a number of venues, often in the form of ALJ and Staff supervised collaboratives, to seek information from Bell Atlantic, and to provide the Commission and Bell Atlantic with information about how to spur local competition in the New York local exchange market by complying with the Act.

**B. The Collaborative Processes Utilized by the New York Commission Were Generally Successful and Should Be Utilized In Future State Commission 271 Evaluations**

The New York Commission has undertaken a series of collaboratives dealing with most aspects of Bell Atlantic's section 271 compliance. The New York Commission held collaboratives addressing interconnection arrangements between CLECs and Bell Atlantic, as well as a collaborative which resulted in a negotiated agreement regarding OSS Baseline Documentation/Interfaces. In addition, Administrative Law Judge Jaclyn Brilling oversaw the Carrier to Carrier Metrics Collaborative which has resulted in the promulgation of strong performance metrics that, by and large, ensure a true picture of Bell Atlantic's performance vis-a-vis its CLEC customers.<sup>5</sup> There is no denying the success of the collaborative process in hammering out a consensus, or at least allowing staff to form an accurate appraisal of the parties true bottom line positions outside of a litigation context.<sup>6</sup> Therefore, the Commission should strongly encourage other states to implement collaborative processes in evaluating future 271 applications.

---

<sup>5</sup> See *Order Adopting Inter-Carrier Service Quality Guidelines*, Case 97-C-0139 (NY P.S.C. Feb. 16, 1999); *Order Establishing Permanent Rule*, Case 97-C-0139 (NY P.S.C. June 30, 1999).

<sup>6</sup> The New York Commission utilized a collaborative process in devising the scope and scale of the third-party test of Bell Atlantic's OSS that was conducted by KPMG Peat Marwick ("KPMG Test"). Competitors were allowed to provide  
(continued...)

**C. The Third-Party Testing Conducted in New York Was Exhaustive and the New York Style OSS Test Should Be Recommended By the Commission As The Model Third-Party Test For The Country**

The Commission has long recognized that assessing the access available to competitors is a critical piece of the analysis in determining whether the local exchange market in a particular state is open to competition.<sup>7</sup> In analyzing an BOC's compliance with its obligation to provide nondiscriminatory access to OSS pursuant to section 271(c)(2)(B)(ii) and (xiv) the Commission requires that all of the automated and manual processes a BOC uses to provide access to OSS functions be evaluated.<sup>8</sup> The Commission has indicated that "the most probative evidence that OSS functions are operationally ready is actual commercial usage."<sup>9</sup> However, the Commission has also stated that carrier-to-carrier testing, independent third-party testing, and internal testing also can provide probative evidence of the operational readiness of an applicant's OSS.<sup>10</sup> Third-party testing has become the method of choice for state commissions evaluating

---

(...continued)

meaningful input regarding both test procedures and as an advocate for neutral and complete test parameters. The result was the development of an OSS test that generally provided a real world evaluation of whether Bell Atlantic's OSS systems are presently capable of handling commercial volumes of orders that can be expected if Bell Atlantic receives 271 authority.

<sup>7</sup> *Ameritech Michigan Section 271 Order*, ¶ 134.

<sup>8</sup> *See id.*

<sup>9</sup> *Ameritech Michigan Section 271 Order*, ¶138; *See Application of Bell South Corporation, BellSouth Telecommunications, Inc, and BellSouth Long Distance, Inc., for Provision of In-Region InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599, ¶ 86 (1998) ("*BellSouth Louisiana II Section 271 Order*").

<sup>10</sup> *Id.*

RBOC compliance with OSS requirements, primarily as a result of the highly successful third-party testing undertaken by the New York Commission.<sup>11</sup>

The third-party OSS test conducted in New York constitutes the most stringent OSS test that has been undertaken by any state commission examining RBOC compliance with section 271 to date, and should be adopted as the model OSS test for state commissions evaluating an RBOC's OSS readiness. The New York Commission initiated its third party testing process of Bell Atlantic's OSS with the issuance of a Request for Proposal (RFP) on March 6, 1998. The objective of the test, as set forth in the New York "Master Test Plan"<sup>12</sup> was to provide a test of Bell Atlantic's systems under real world conditions.

The OSS test conducted by KPMG evaluated Bell Atlantic's OSS interfaces and processes in order to evaluate whether Bell Atlantic's OSS provides CLECs nondiscriminatory access; whether Bell Atlantic is capable of providing CLECs with the documentation and support necessary to access and utilize Bell Atlantic's OSS; and whether Bell Atlantic's OSS systems are operationally ready to provide an appropriate level of performance that will allow CLECs to compete with Bell Atlantic in the local market. To that end, the New York Commission's third-party test evaluated all stages of the CLEC/Bell Atlantic relationship, including the establishment of the relationship, daily operations, and maintenance of the daily relationship on an on-going basis. The testing

---

<sup>11</sup> See e.g. *In re Joint Petition of Nextlink Pennsylvania, Inc. et al. For an Order Establishing a Formal Investigation of Performance Standards, Remedies and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc.*, Docket No. P-00991643 (PA P.U.C. Apr. 29, 1999).

<sup>12</sup> See *Bell Atlantic OSS Evaluation Project – Master Test Plan*, Final Version 2.0, Case 97-C-0271 (Jul. 31, 1998) ("KPMG Test Plan").

conducted by KPMG was divided into four areas: pre-order, order and provisioning; maintenance and repair; billing; and relationship management and infrastructure.<sup>13</sup>

Testing was accomplished by developing a suite of 133 base test scenarios that described realistic situations wherein CLECs were purchasing wholesale services and network elements from Bell Atlantic.<sup>14</sup> KPMG inserted variables into the base scenarios to create a number of test situations, such as errors and supplements to CLEC orders.<sup>15</sup> Further, the KPMG test sought to evaluate volumes of test scenarios that mirror both the complexity and volumes of CLEC orders that Bell Atlantic could expect to receive in a newly competitive market.

The KPMG Test was originally designed as a one-time diagnostic test of Bell Atlantic's OSS abilities. However, in order to address test results which indicated that Bell Atlantic did not perform satisfactorily, the New York Commission shifted the philosophy of test from being a one-time diagnostic test, to a military-style "test until you pass" evaluation.<sup>16</sup> Accordingly, the testing process was modified as follows: KPMG conducted testing of a component; KPMG would inform Bell Atlantic of any problems associated with a failed component and its potential impact on a CLEC by creating a written "Exception;" Bell Atlantic would prepare a written response to the Exception describing how it intended to address the problem or disputing that a problem existed; KPMG would retest the component, if necessary; if the Exception was "cleared" then the

---

<sup>13</sup> *KPMG Test Plan*, at III-7.

<sup>14</sup> *KPMG Test Plan*, at III-3.

<sup>15</sup> *Id.*

<sup>16</sup> See *New York Department of Public Service Bell Atlantic OSS Evaluation Project Final Report*, KPMG Final Version 2.0, at II-4 (Aug. 6, 1999) ("KPMG Final Report").

process was considered complete and KPMG prepared a written closure statement, otherwise testing continued until closure was reached.<sup>17</sup>

While all in all a comprehensive test, one weakness of the KPMG Test was its omission of tests to evaluate Bell Atlantic's ability to provision DSL capable loops and enhanced extended links ("EELs").<sup>18</sup> In light of the Commission's forthcoming *UNE Remand Order*,<sup>19</sup> all future OSS tests should include an evaluation of the BOC's ability to provision DSL loops and EELs. In fact, the Commission's Common Carrier Bureau recently indicated that future third party evaluations of a BOC's ability to provide nondiscriminatory access to OSS should "test significant volumes of xDSL orders (*i.e.*, xDSL capable loops)."<sup>20</sup>

The KPMG Test identified a number of deficiencies in Bell Atlantic's OSS systems that would not have otherwise been identified by a less rigorous evaluation. ALTS therefore submits that the rigorous end-to-end, military style third-party test

---

<sup>17</sup> See *id.*

<sup>18</sup> See Minutes of Technical Conference, Case 97-C-0271, (Jul. 29, 1999). KPMG acknowledged at the July technical conference that "xDSL was not a component of the formal [KPMG OSS] test plan," but rather, KPMG's evaluation consisted of KPMG conducting an "observation that was done at the request of the Department. The remarks are based on a half a day or day of observations that clearly don't meet the standards of the kind of things we have done elsewhere in our report."

<sup>19</sup> On September 15, 1999, as a result of *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999), the Commission adopted rules specifying the portions of an ILEC's network that must be made available to competitors. At present, the Commission has not yet released the Order, however, the Commission stated at its September 15, 1999, Open Meeting that DSL capable loops, dark fiber loops, subloop elements, dark fiber transport, inside wire, and EELs are now part of the list of unbundled network elements ("UNEs") that ILECs must offer to competing carriers. See FCC Promotes Local Competition – Adopts Rules on Unbundling of Network Elements," FCC Press Statement, September 15, 1999.

<sup>20</sup> Letter from Lawrence E. Strickling, Chief Common Carrier Bureau, to Nancy E. Lubamersky, Executive Director, Regulatory Planning, U S West (Sept. 27, 1999).



conducted by the New York Commission be recommended by the Commission as the model third-party evaluation tool to be used by state commissions in conducting all future evaluations of BOC compliance with their 271 OSS obligations.

## **II. BELL ATLANTIC MUST DEMONSTRATE FULL COMPLIANCE WITH EACH REQUIREMENT UNDER SECTION 271**

The Act conditions BOC entry into in-region, interLATA services on compliance with Section 271, which was added by the Telecommunications Act of 1996. Pursuant to Section 271, BOCs must first apply to the Commission for authorization to provide interLATA services originating in any in-region state.<sup>21</sup> The Commission must then issue a written determination on each application no later than 90 days after receiving same.<sup>22</sup> In acting on a BOC's application, the Commission must consult with the U.S. Attorney General and give substantial, but not outcome determinative, weight to the Attorney General's evaluation of the BOC's application.<sup>23</sup> In addition, the Commission must consult with the applicable state commission to verify that the BOC has in place one or more state-approved interconnection agreements with a facilities-based competitor<sup>24</sup> and that such arrangements comport with the section 271 competitive checklist.<sup>25</sup> The

---

<sup>21</sup> See 47 U.S.C. § 271(d)(1).

<sup>22</sup> See *id.* § 271(d)(3).

<sup>23</sup> See *id.* § 271(d)(2)(A).

<sup>24</sup> See *id.* § 271(d)(2)(B). BOCs may enter an application based on one of two "tracks" established under Section 271(c)(1). Track A requires the BOC to prove the presence of an unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers. See *id.* § 271(c)(1)(A). Track B requires the BOC to prove that no unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers has requested access and interconnection to the BOC network within certain specified time parameters. See *id.* § 271(c)(1)(A). Bell Atlantic is applying under Track A. See Application at 4-9.

Commission may not grant authorization for a BOC to provide in-region, interLATA service under section 271 unless it finds that the BOC has demonstrated that: (1) it satisfies the requirements for Track A or B entry;<sup>26</sup> (2) it has *fully* implemented and is *currently providing* all of the items set forth in the competitive checklist;<sup>27</sup> (3) the requested authorization will be carried out in accordance with Section 272;<sup>28</sup> and (4) the BOC's entry is consistent with the public interest, convenience and necessity.<sup>29</sup>

**A. The "Is Providing" Standard Under Section 271**

In its evaluation of past section 271 applications the Commission has mandated that a BOC demonstrate that it "is providing" each of the offerings enumerated in the 14-point competitive checklist codified in section 271(c)(2)(B).<sup>30</sup> The Commission has indicated that in order to establish that a BOC "is providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is

---

(...continued)

<sup>25</sup> The Competitive Checklist is a 14-point list of critical, market-opening provisions. *See infra* Section II.

<sup>26</sup> *See* 47 U.S.C. § 271(d)(3)(A).

<sup>27</sup> *See id.*

<sup>28</sup> *See* 47 U.S.C. § 271(d)(3)(B).

<sup>29</sup> *See* 47 U.S.C. § 271(d)(3)(C).

<sup>30</sup> *See Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 78 (1997) (citing *Ameritech Michigan Section 271 Order*, ¶ 110).

currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.<sup>31</sup>

Moreover, the “is providing” standard requires that BOCs offer items described in the competitive checklist – in addition to any UNEs established by the Commission – at Total Element Long Run Incremental Cost (“TELRIC”) rates in order to obtain in-region interLATA relief. As the Commission found in its *Ameritech Michigan Section 271*

*Order*:

We conclude that Congress must have intended the Commission, in addressing section 271 applications, to construe the statute and apply a uniform approach to the phrase ‘based on cost’ when assessing BOC compliance with the competitive checklist.<sup>32</sup>

Furthermore, the Supreme Court has upheld the Commission’s authority to require TELRIC pricing, holding that “the Commission has jurisdiction to design a pricing methodology.”<sup>33</sup> Thus, BOCs must provide competitive checklist items at TELRIC rates in order to obtain section 271 authority. State commissions have adopted the “is providing” standard as well. For example, the Georgia Public Service Commission stated that “promises of future performance to address particular concerns raised by commenters have no probative value in demonstrating [a BOC’s] present compliance with the requirements of section 271.”<sup>34</sup>

---

<sup>31</sup> *See id.*

<sup>32</sup> *Ameritech Michigan Section 271 Order*, ¶ 288.

<sup>33</sup> *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (1999).

<sup>34</sup> *In re BellSouth Telecommunications, Inc.’s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 6863-U, (Ga. P.S.C. Oct. 15, 1998).

**B. Bell Atlantic's Application Does Not Meet the "Is Providing" Standard Under Section 271**

Bell Atlantic appears, in ALTS' estimation, to have complied with its obligation to demonstrate that it "is providing" the majority of the items on the competitive checklist. ALTS submits, however, that Bell Atlantic has failed to demonstrate that it "is providing" several items contained on the competitive checklist, and Bell Atlantic must be in compliance with all fourteen checklist items in order satisfy one prong of section 271. Failure to satisfy even a single checklist item precludes a finding of compliance with section 271.<sup>35</sup>

Bell Atlantic's Application is deficient in several fundamental areas: (1) Bell Atlantic does not provide nondiscriminatory access to unbundled loops; (2) Bell Atlantic has not demonstrated that it provides interconnection that complies with the requirements of section 251 as a result of Bell Atlantic's failure to make its collocation tariffs compliant with the Commission's *Collocation Order*;<sup>36</sup> (3) Bell Atlantic does not provide nondiscriminatory access to unbundled transport and interconnection trunks; (4) it does not appear that Bell Atlantic provides nondiscriminatory access to poles, ducts, conduits and rights of way at just and reasonable rates and in compliance with section 224 of the Act; and (5) Bell Atlantic does not comply with its resale obligations under the Act. Below, ALTS discusses the legal standards that the Commission has applied in its previous evaluations of RBOC applications for 271 relief, and provides a complete analysis of Bell Atlantic's Application.

---

<sup>35</sup> *BellSouth Louisiana Section 271 Order*, ¶ 50

### III. BELL ATLANTIC HAS MADE SUBSTANTIAL PROGRESS IN ITS COMPLIANCE WITH 271 OBLIGATIONS

Bell Atlantic filed a draft application seeking section 271 approval with the New York Commission on February 13, 1997. Shortly thereafter the Commission issued a ruling analyzing the status of Bell Atlantic's compliance with its 271 obligations.<sup>37</sup> A number of areas of concern were identified by the New York Commission based upon the record. Specifically, Bell Atlantic was deemed by the New York Commission, at that time, to be incapable of meeting competitive demand for unbundled loops, OSS and collocation. Moreover, the New York Commission indicated that the bona fide request ("BFR") and network design request ("NDR") processes were too ad hoc and vaguely defined to function in a manner that would allow CLECs to obtain interconnection, UNEs and customized procedures. The New York Commission indicated that the inherent uncertainty and delay associated with the BFR and NDR processes unnecessarily put competitors at a disadvantage, and precluded a finding of commercial availability of UNEs, OSS, or collocation. Further, the New York Commission stated that the provisioning intervals offered by Bell Atlantic for interconnection trunks, collocation, UNEs and number portability were unacceptable.

In the time since the New York Commission's early ruling on the status of Bell Atlantic's compliance with section 271, hundreds of thousands of hours have been

---

(...continued)

<sup>36</sup> See *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-48 (rel. Mar. 31, 1999) ("Collocation Order").

<sup>37</sup> *Ruling Concerning the Status of the Record*, Case 97-C-0271 (Jul. 8, 1997).

devoted to analyzing Bell Atlantic's compliance.<sup>38</sup> Bell Atlantic has improved dramatically its performance in each of the areas identified by the New York Commission as problematic in 1997, and by and large, has complied with many of the commitments it made to the New York Commission in its Pre-Filing Statement.<sup>39</sup> As set forth below, ALTS believes that Bell Atlantic appears to have demonstrated compliance with most of the items on the 271 competitive checklist.

#### **IV. BELL ATLANTIC APPEARS TO DEMONSTRATE COMPLIANCE WITH NINE OF THE FOURTEEN ITEMS ON THE 271 COMPETITIVE CHECKLIST**

Bell Atlantic appears to be providing the majority of the items it is required to provide under the 271 competitive checklist. Set forth below are the competitive checklist items that, in ALTS' estimation appear to be being provided by Bell Atlantic in accordance with their section 271 obligations.

Based upon the record, it appears that Bell Atlantic has met the requirements of this checklist item.

##### **A. Bell Atlantic Appears to Provide Access to Unbundled Switching**

Section 271(c)(2)(B)(vi) of the Act requires a BOC to provide or offer to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services. To meet this checklist item, the BOC must demonstrate that it provides nondiscriminatory access to all of the features, functions, and capabilities of the

---

<sup>38</sup> See *Minutes of Technical Conference*, Case 97-C-0271, Tr. at 2062 (Jun. 6, 1999) (KPMG alone expended over 100,000 hours in conducting its evaluation of Bell Atlantic's compliance with OSS obligations).

<sup>39</sup> *Pre-Filing Statement of Bell Atlantic-New York*, Case 97-C-0271 (Apr. 6, 1998).

unbundled local switch. Local switching is an unbundled network element that must be provided on a nondiscriminatory basis pursuant to section 251(c)(3).<sup>40</sup> This checklist item is important because it allows the new entrant to make use of the BOC's switch, and it enables customers of the new entrant to have access to the same features a BOC provides.

Bell Atlantic states that it has provided over 152,000 unbundled switching elements in New York, with all but 50 as part of platforms.<sup>41</sup> These switching elements, Bell Atlantic contends, are provided on time with over 99 percent delivered by their due dates in June, July, and August 1999.<sup>42</sup> Bell Atlantic also claims now to be successfully routing directory-assistance and operator-services traffic, as well as providing terminating usage data, to competing carriers.<sup>43</sup> Based upon the record and our members' recent experiences, it appears that Bell Atlantic has met the requirements of this checklist item.

**B. Bell Atlantic Appears to Provide Nondiscriminatory Access To 911/E911, DA, and Operator Call Completion**

Section 271(c)(2)(B)(vii) of the Act requires a section 271 applicant to provide or offer to provide: "[n]ondiscriminatory access to – (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services. In order to provide 911 and E911 services at parity Bell Atlantic must maintain the E911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its

---

<sup>40</sup> See 47 U.S.C. § 271(c)(2)(B)(ii) and (iv).

<sup>41</sup> See Application, at 28.

<sup>42</sup> See *id.*

<sup>43</sup> See *id.* at 27.

own customers.<sup>44</sup> Bell Atlantic must also provide facilities-based competitors with interconnection through the use of dedicated trunks from the requesting carrier's switching facilities to the applicable 911 control office and 911 databases, at parity with what the BOC provides to itself.<sup>45</sup> In addition, Bell Atlantic must provide facilities-based competitors unbundled access to its 911 database at parity with what the BOC provides to itself.<sup>46</sup>

Bell Atlantic claims to be meeting all of this checklist item requirements.<sup>47</sup> First, where competing carriers do not have their own switches, Bell Atlantic states that it enters the competing carriers' customer data exactly as it does for its customers.<sup>48</sup> Second, Bell Atlantic states that it has provided competing carriers with 822 911/E911 trunks, all on a timely basis.<sup>49</sup> Further, Bell Atlantic states that competing carriers may purchase its directory services either "unbranded" or "rebranded" with answering times "roughly as quickly" as for Bell Atlantic customers. Last, Bell Atlantic submits that it is now offering operator services to competing carriers on a timely basis, in either unbranded or rebranded form, and with similar answer times as Bell Atlantic customers receive. Based upon the experience of ALTS' members, it appears that Bell Atlantic has met the requirements of this checklist item.

---

<sup>44</sup> See *Ameritech Michigan Section 271 Order*, ¶ 256.

<sup>45</sup> See *id.*

<sup>46</sup> See *id.* ¶¶ 256, 270.

<sup>47</sup> See Application, at 35-38.

<sup>48</sup> See *id.* at 35.

<sup>49</sup> See *id.* at 36.



**C. Bell Atlantic Appears to Provide White Page Directory Listings on a Nondiscriminatory Basis**

Section 271(c)(2)(B)(viii) states that access or interconnection provided or generally offered by a BOC must include: "White [P]ages directory listings for customers of the other carrier's telephone exchange service." This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider.

Bell Atlantic characterizes competing carriers' use of Bell Atlantic's White Pages directory as extensive.<sup>50</sup> Bell Atlantic states that it now prints listings in its directory for competing carriers' customers in identical fashion with no distinguishing features.<sup>51</sup> Further, Bell Atlantic states that it uses the same error detection and correction procedures for competing carriers' listing as it does its own.<sup>52</sup> Also, Bell Atlantic states that it has procedures in place to allow CLECs to preview their customer data and to prevent dropped data when a customer switches service from Bell Atlantic to a competing carrier.<sup>53</sup> Further, Bell Atlantic claims that any problems with dropped customer data resulting from a change to a competing carrier have been successfully adjusted and approved by KPMG.<sup>54</sup> While several ALTS members have, up until recently, experienced problems with an unacceptable number of directory listings dropping out of Bell Atlantic's database, Bell Atlantic has instituted corrective measures, and it now appears that the significant problems with directory listings have been

---

<sup>50</sup> See Application at 38.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

addressed. Based upon the recent improvements in Bell Atlantic's performance, it is ALTS' opinion that Bell Atlantic appears to have met the requirements with respect to this checklist item.

**D. Bell Atlantic Appears to Comply with Rules and Regulations Relating to Numbering Access and Administration.**

Section 271(c)(2)(B)(ix) of the Act requires a section 271 applicant to provide nondiscriminatory access to telephone numbers for assignment to competing carriers' telephone exchange service customers, "until the date by which telecommunications numbering administration guidelines, plan, or rules are established." After that date, the BOC is required to comply with such guidelines, plan, or rules.

Because the BOC functions as numbering administrators have all been transferred to Lockheed Martin Information Management Services in its capacity as the North American Numbering Plan Administrator, Lockheed Martin now assigns numbers to competing carriers.<sup>55</sup> As a result, as of July 1999, Bell Atlantic is no longer responsible for assigning numbers, either to itself or to competing carriers. In its Application, Bell Atlantic states that it provides testing so that calls will be routed appropriately, and that such testing is available to competitors and is provided on a timely basis.<sup>56</sup> Assignment of numbering responsibilities to Lockheed Martin obviates most of the risk of CLECs experiencing discrimination by Bell Atlantic. From ALTS members experiences, there is

---

(...continued)

<sup>54</sup> See *id.* at 39.

<sup>55</sup> See generally *Administration of the North American Numbering Plan and Toll Free Service Access Codes*, Third Report and Order, 12 FCC Rcd 23040 (1997) ("NANP Order III").

<sup>56</sup> See Application, at 40.

no evidence that BA is not complying with the number assignment rules or guidelines and therefore it appears the BA has complied with this check-list item.

**E. Bell Atlantic Appears to Provide Nondiscriminatory Access To Databases And Signaling**

Section 271(c)(2)(B)(x) of the Act requires a section 271 applicant to provide or offer to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion." To fulfill the nondiscrimination obligation in this checklist item, Bell Atlantic must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that competing providers have the same ability to transmit, route, complete and bill for telephone calls as Bell Atlantic.

Bell Atlantic states that it provides competing carriers, long distance companies, independent telephone companies, and wireless carriers with nondiscriminatory access to its SS7 (signaling) network.<sup>57</sup> Additionally, Bell Atlantic declares that all carriers that purchase unbundled switching and unbundled platform elements receive automatic access to signaling.<sup>58</sup> Access to call-related databases, Bell Atlantic states, is provided to competing carriers on a nondiscriminatory basis.<sup>59</sup> That is, CLEC queries to the databases are commingled with Bell Atlantic's queries and are processed on a first-come, first-serve basis.<sup>60</sup> Further, Bell Atlantic states that it offers access to its Service Management System Database and Advanced Intelligent Network services in the same

---

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See *id.* at 41.

<sup>60</sup> See *id.*

manner as to itself.<sup>61</sup> Based upon the experiences of ALTS members, it appears that Bell Atlantic is currently meeting its burden with respect to this checklist item.

**F. Bell Atlantic Appears to Provide Interim Number Portability and Long-Term Number Portability Where Required.**

Section 271(c)(2)(B)(xi) of the Act states that "[u]ntil the date by which the Commission issues regulations pursuant to section 251 to require number portability," a section 271 applicant must provide "interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible." Number portability enables consumers to take their phone number with them when they change local telephone companies. To fulfill this checklist item, the BOC must provide number portability in a nondiscriminatory manner as soon as reasonably possible following a request from a competitor. This checklist item is important because it permits consumers to change service providers without having to change their telephone number.

Bell Atlantic states that it has implemented long-term number portability ("LNP") in all of its end offices in New York, and provides LNP to CLECs under its previously approved federal tariffs.<sup>62</sup> Bell Atlantic further states that it continues to maintain interim number portability capabilities for CLECs that have not yet migrated to LNP.<sup>63</sup> With the exception of LNP issues manifested in the hot cut process notwithstanding, it appears that

---

<sup>61</sup> See *id.* at 42.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.* at 43.

in the experience of ALTS members that Bell Atlantic has met the requirements of this checklist item.

**G. Bell Atlantic Appears to Provide Information For Local Dialing Parity**

271(c)(2)(B)(xii) of the Act requires a section 271 applicant to provide:

"[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." Section 251(b)(3) imposes upon all LECs the duty to provide dialing parity to providers of telephone exchange service and telephone toll service with "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." Consistent with the statutory definition of dialing parity and section 251(b)(3), Bell Atlantic must demonstrate that customers of competing carriers are able to dial the same number of digits that the BOC's customer dials to complete a telephone call and that they do not experience unreasonable dialing delays.

Bell Atlantic states that it not only provides local dialing parity throughout New York, but it also provides intraLATA toll dialing parity – which is not a checklist item.<sup>64</sup> To date, ALTS members have not experienced difficulty with Bell Atlantic's performance of this checklist item. Therefore, it appears that Bell Atlantic has met its obligations with respect to this checklist item.

---

<sup>64</sup> *See id.*

#### **H. Bell Atlantic Appears to Provide Reciprocal Compensation**

Section 271(c)(2)(B)(xiii) of the Act requires that a section 271 applicant's access and interconnection include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. If the BOC provides in its interconnection agreement reciprocal compensation arrangements, it must demonstrate compliance with the interconnection agreement by making all required payments in a timely fashion.

Bell Atlantic states that it provides reciprocal compensation to competing carriers for termination of local calls in New York.<sup>65</sup> During the first seven months of 1999, Bell Atlantic claims that it paid competing carriers \$98.4 million in reciprocal compensation payments while collecting only \$7.5 million from competing carriers.<sup>66</sup> While Bell Atlantic has not sought to avoid its obligation to pay reciprocal compensation for ISP-bound traffic to carriers in New York, in other states the Bell Atlantic has sought to avoid its reciprocal compensation obligations and pay inter-carrier compensation by petitioning the state commission to allow it to hold reciprocal compensation payments due to CLECs in an escrow fund.<sup>67</sup> To the extent that Bell Atlantic refrains from seeking to avoid its reciprocal compensation obligations in New York in this manner, it appears that Bell Atlantic has met its burden with respect to this checklist item.

---

<sup>65</sup> See *id.*

<sup>66</sup> See *id.* at 43-44.

<sup>67</sup> See *In re Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts for Breach of Interconnection Terms Entered Into under Sections 251 and 252 of the Telecommunications Act of 1996*, D.T.E. 97-116-C (Mass. D.T.E. May 19, 1999).

**V. DESPITE SUBSTANTIAL PROGRESS BELL ATLANTIC HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST AND DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNES**

As ALTS indicated above, Bell Atlantic has made dramatic progress in eliminating barriers to competitive entry in the local exchange market in the State of New York. As a result of the hard work of the New York Commission and its Staff, along with the dedicated efforts of Bell Atlantic and ALTS members, substantial progress has been made in making a competitive market in New York a reality. But despite the substantial progress achieved over the last several years, deficiencies remain in several areas that are of critical importance to promoting local competition.

The section 271 competitive checklist was designed to require BOCs to prove that their markets are open to competition before they are authorized to provide long distance services. In enacting the competitive checklist, Congress recognized that unless a BOC has *fully* complied with the checklist, competition in the local market will not occur.<sup>68</sup> Bell Atlantic must provide the Commission with “actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior.”<sup>69</sup> The Commission has steadfastly held that applications under section 271 should be granted only when the local market in a state has been fully and irreversibly opened to competition.<sup>70</sup> Furthermore, each and every checklist item is significant. As the Commission has consistently indicated, failure to comply with even a *single* checklist item constitutes independent grounds for denying

---

<sup>68</sup> *Ameritech Michigan Section 271 Order*, ¶ 18.

<sup>69</sup> *Ameritech Michigan Section 271 Order*, ¶ 55.

<sup>70</sup> *See infra* Section IX.n.204.